

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
37.86.1101, 37.86.1102, and)	
37.86.1105 pertaining to Medicaid)	
requirements and reimbursement for)	
outpatient drugs)	

TO: All Interested Persons

1. On April 24, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-439 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 792 of the 2008 Montana Administrative Register, issue number 8.

2. The department has amended ARM 37.86.1101, 37.86.1102, and 37.86.1105 as proposed.

3. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: We agree that the dispensing fee should be increased. We hope that the department will increase it further to approach the actual cost of the service.

RESPONSE: The department thanks the commentor for their support of the increased dispensing fee as allowed through legislative appropriations. The department will continue to evaluate a provider's cost to dispense prescription drugs and make necessary adjustments within the department's budget.

COMMENT #2: We believe that dispensing a 90 day supply would harm patients by limiting interactions with the pharmacy.

RESPONSE: The department disagrees. This service is intended only for very select classes of medications and only after the patient is established on a stable dose. A patient filling a prescription for a new medication or new strength of medication would not be allowed to fill a maintenance supply of a medication until it has been demonstrated that the patient can tolerate and appropriately respond to the medication. The department intends that it will be one to two months or more before a new prescription becomes a "maintenance medication" for that patient. Since this service applies only to generic tablet or capsule form maintenance medications, the pharmacy will likely continue to be filling other prescriptions for the patient on a monthly basis. The department based this rule on a study demonstrating increased medication compliance by allowing maintenance supplies of certain medications. The commentors provided no evidence to the contrary.

COMMENT #3: We are concerned that dispensing a 90 day supply of medication could potentially magnify the problem of patients filling prescriptions at more than one pharmacy.

RESPONSE: If a patient's medication has been determined to be a maintenance drug, a prescription for a new strength of a maintenance drug would not meet the definition of a "maintenance medication" and a maximum 34 day supply would be allowed. If the patient decided to go to a different pharmacy, Medicaid's Prospective Drug Utilization Review (ProDUR) edits would alert the new pharmacist to any potential issues. Nothing in these amendments changes the patient's ability to use the pharmacy of their choice.

COMMENT #4: Rural access could be adversely affected if pharmacy business is adversely affected by a large number of patients obtaining medication by mail order. We are concerned about the potential losses when dispensing maintenance supplies of medications. This could run rural pharmacies out of business, especially if other payors follow Medicaid's lead.

RESPONSE: The department disagrees. This service is intended only for very select classes of medications and only after the patient is established on a stable dose. The department acknowledges that pharmacies will not collect three dispensing fees for filling one prescription. However, maintenance supplies are permitted only in a select few categories of generic drugs where compliance increases positive outcomes for patients. Medications not on the list of maintenance medications, the majority of Medicaid pharmacy claims, would still be limited to a 34 day supply. Thus, the effect on even a small pharmacy, if any, should be minimal.

Medicaid is secondary to other third party payors. These amendments will allow Medicaid to conform to federal mandates requiring that Medicaid be the payor of last resort. By allowing 90 day or 100 dose supplies to be billed to both a patient's primary insurance as well as Medicaid, these amendments ensure the department will be the payor of last resort.

COMMENT #5: Dispensing a 90 day supply will cause waste due to lost or changing prescriptions. It could be used to obtain medications when a patient is no longer eligible for Medicaid.

RESPONSE: The commentors were concerned with the cost of medications when a patient does not have consecutive monthly spans of Medicaid eligibility. They argued that if eligibility spans are not consecutive, an oversupply of medication would result, to the detriment of Montana taxpayers. The department researched this argument thoroughly, and disagrees with the commentors. The department acknowledges the possibility that some patients may not have consecutive monthly spans of eligibility considering the month-to-month eligibility determination for Medicaid, however there are no statistics to support that this is a widespread issue or that it has a significant effect on Medicaid expenditures.

4. These amendments are effective July 1, 2008.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State June 2, 2008.